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Lead Counsel for the Direct Purchaser Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO: THE DIRECT PURCHASER CLASS ACTION

Master File No. 3:17-md-02801-JD
Civil Action No. 3:14-cv-03264-JD

**DIRECT PURCHASER CLASS'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT WITH DEFENDANTS
MATSUO ELECTRIC CO., LTD.,
NIPPON CHEMI-CON CORP. AND
UNITED CHEMI-CON, INC.**

Date: May 5, 2022
Time: 10:00 a.m.
Courtroom: 11, 19th Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that at 10:00 a.m. on May 5, 2022, at the United States District Court for the Northern District of California located at 450 Golden Gate Avenue, San Francisco, CA 94102, or as soon thereafter as the matter may be heard, the Direct Purchaser Class (the “Class”) will and hereby does move the Court for an order granting preliminary approval of the Class’s class action settlements with Defendants Matsuo Electric Co., Ltd., Nippon Chemi-Con Corp. and United Chemi-Con, Inc. in partial settlement of this class action lawsuit.

The Class's motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Joseph R. Saveri and the exhibits attached thereto, the Declaration of Kendall S. Zylstra and the exhibits attached thereto, the Declaration of Eugene Krzywinski, the Declaration of Barry Reed Lubman, the Declaration of Shawn Ryan, the Declaration of John Walker, the Court's files and records in this matter, oral argument of counsel, and such other and further matters as the Court may consider.

Dated: March 31, 2022

Respectfully Submitted,

JOSEPH SAVERI LAW FIRM, LLP

By: /s/ Joseph R. Saveri
Joseph R. Saveri

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1 TABLE OF CONTENTS
2

		Pages
I.	INTRODUCTION	1
II.	CASE HISTORY	2
	A. The Class's Factual Allegations and Claims	2
	B. Procedural History and Discovery	2
	C. Prior Settlement History.....	3
III.	SUMMARY OF PROPOSED SETTLEMENT.....	4
	A. Settlement Consideration—\$165 Million	4
	1. The Settlements Are in the Best Interests of the Class	4
	2. Matsuo's Settlement Consideration.....	4
	3. Chemi-Con's Settlement Consideration	5
	B. The Class.....	5
	C. Release of Claims.....	6
	D. Attorneys' Fees and Expenses	6
	E. Class Representative Service Awards.....	8
IV.	THE PROPOSED SETTLEMENTS SHOULD BE PRELIMINARILY APPROVED	9
	A. Standards for Preliminary Approval of a Proposed Settlement	9
	B. The Proposed Settlements Are Procedurally Sound and Presumptively Fair	10
	C. The Proposed Settlements Are Within the Range of Reasonableness	10
V.	THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED	12
	A. Summary of Notice Plan.....	12
	1. Notice and Claims Administrator.....	12
	2. Settlement Website	13
	3. Direct Mail Notice—Long Form Notice.....	13
	4. Publication of Notice	14
	B. The Notice Forms and Dissemination Plan Meet All Requirements.....	14

1	VI.	DISTRIBUTION AND USE OF SETTLEMENT FUNDS.....	14
2	A.	Distribution of Funds to Class Members	14
3	B.	Payment of Claims Administration Expenses.....	15
4	VII.	THE FINAL APPROVAL HEARING SHOULD BE SCHEDULED	15
5	VIII.	CONCLUSION	15
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1 TABLE OF AUTHORITIES
23 Page(s)
45 Cases
6

7 <i>In re Auto. Refinishing Paint Antitrust Litig.</i> , MDL No. 1426, 2004 WL 1068807 (E.D. Pa. 8 May 11, 2004).....	10
9 <i>Carlin v. DairyAmerica, Inc.</i> , 380 F. Supp. 3d 998 (E.D. Cal. 2019).....	7, 11
10 <i>In re Cathode Ray Tube (CRT) Antitrust Litig.</i> , No. 4:07-cv-05944-JST (N.D. Cal. June 8, 11 2017), ECF No. 5168	15
12 <i>In re Cipro Cases I and II</i> , J.C.C.P. Nos. 4154, 4220 (San Diego County Super. Ct.).....	13
13 <i>In re Citric Acid Antitrust Litig.</i> , 145 F. Supp. 2d 1152 (N.D. Cal. 2001)	14
14 <i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992).....	10
15 <i>In re Dynamic Random Access Memory (DRAM) Antitrust Litig.</i> , No. M-02-1486 PJH, slip. 16 op. (N.D. Cal. Nov. 1, 2006)	10
17 <i>In re Facebook Biometric Info. Priv. Litig.</i> , 522 F. Supp. 3d 617 (N.D. Cal. 2021).....	8
18 <i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	10
19 <i>In re Heritage Bond Litig.</i> , No. 02-ML-1475 DT, 2005 WL 1594403 (C.D. Cal. June 10, 20 2005)	7, 10
21 <i>In re High-Tech Emps. Antitrust Litig.</i> , No. 11-cv-02509, 2013 WL 6328811 (N.D. Cal. 22 Oct. 30, 2013)	10
23 <i>In re High-Tech Emps. Antitrust Litig.</i> , No. 11-cv-02509, 2015 WL 12991307 (N.D. Cal. 24 Mar. 3, 2015)	10
25 <i>In re Lidoderm Antitrust Litig.</i> , No. 14-md-02521-WHO, 2018 WL 4620695 (N.D. Cal. 26 Sep. 20, 2018).....	7
27 <i>Linney v. Cellular Alaska P'ship</i> , Nos. C-96-3008 DLJ, C-97-0203 DLJ, C-97-0425 DLJ 28 & C-97-0457 DLJ, 1997 WL 450064 (N.D. Cal. July 18, 1997)	12
29 <i>Low v. Trump Univ., LLC</i> , No. 10-cv-00940-GPC-WVG, 2016 WL 7387292 (S.D. Cal. 30 Dec. 20, 2016)	12
31 <i>In re Mego Fin. Corp. Sec. Litig.</i> , 213 F.3d 454 (9th Cir. 2000).....	11

1	<i>In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.</i> , 768 F.	
2	App'x 651 (9th Cir. 2019)	7
3	<i>Norcia v. Samsung Telecomms. Am., LLC</i> , No. 14-cv-00582-JD, 2021 WL 3053018 (N.D.	
4	Cal. July 20, 2021)	8
5	<i>Officers for Justice v. Civ. Serv. Comm'n of City & Cty. Of San Francisco</i> , 688 F.2d 615.....	12, 14
6	<i>In re Online DVD-Rental Antitrust Litig.</i> , 779 F.3d 934 (9th Cir. 2015).....	8, 9
7	<i>In re Packaged Seafood Prods. Antitrust Litig.</i> , Case No. 3:15-md-002670-DMS-MDD,	
8	2022 WL 228823 (S.D. Cal. Jan. 26, 2022)	11
9	<i>Rodriguez v. W. Publ'g Corp.</i> , 563 F.3d 948 (9th Cir. 2009)	7, 8
10	<i>In re Transpac. Passenger Air Transp. Antitrust Litig.</i> , No. 3:07-cv-05634-CRB, 2019 WL	
11	6327363 (N.D. Cal. Nov. 26, 2019).....	7
12	<i>In re Urethane Antitrust Litig.</i> , No. 04-1616-JWL, 2016 WL 4060156 (D. Kan. July 29,	
13	2016)	7
14	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002).....	7

Court Rules

15	Federal Rules of Civil Procedure Rule 23(c).....	12, 14
16	Federal Rules of Civil Procedure Rule 23(e).....	1, 4, 9, 12

Other Authorities

18	M. Waxman, <i>Enforcing American Private Antitrust Decisions in Japan: Is Comity Real?</i> 44	
19	DEPAUL L. REV. 1119 (1995)	4
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1 **I. INTRODUCTION**

2 The Direct Purchaser Class (the “Class”) submits this memorandum in support of their motion
 3 for preliminary approval of the proposed settlement agreements (the “Settlement Agreements”)
 4 between the Class and Defendants Matsuo Electric Co., Ltd. (“Matsuo”), Nippon Chemi-Con Corp.
 5 (“NCC”), and United Chemi-Con, Inc. (“UCC”; NCC and UCC together “Chemi-Con”; Matsuo
 6 and Chemi-Con collectively, the “Settling Defendants”). The Class proposes using the same notice
 7 procedures and allocation plan that the Court approved in connection with the first four rounds of
 8 settlements, including the right to opt out from some or all of the proposed settlements.

9 The Settlement Agreements create a non-contingent, all-cash fund of \$165 million USD
 10 (\$165,000,000), and any interest earned on that amount (the “Settlement Fund”). The settlement
 11 amounts are as follows: (1) Matsuo, \$5,000,000; (2) Chemi-Con, \$160,000,000.¹ The parties reached
 12 these agreements through arm’s-length negotiations between experienced and informed counsel after
 13 almost eight years of litigation in the midst of trial. An enormous amount of discovery had been
 14 completed, and the parties were near the completion of the second jury trial of this matter. The
 15 settlements represent an excellent recovery for the Class and are well within the range of possible
 16 recoveries warranting preliminary approval. Cumulatively, settlements in this case total \$604,550,000, a
 17 recovery of 141.4% of the Class’s single damages as calculated by the Class’s expert.

18 The Class respectfully requests, pursuant to Rule 23 and the Procedural Guidance for Class
 19 Action Settlements for the Northern District of California, that the Court: (1) grant preliminary
 20 approval of the Settlement Agreements; (2) approve the proposed plan of notice to the Class; (3) set a
 21 schedule for disseminating notice to Class Members, as well as deadlines to comment on, opt-out, or
 22 object to the Settlement Agreements; and (4) schedule a hearing pursuant to Rule 23(e) of the Federal
 23 Rules of Civil Procedure to determine whether the proposed Settlement Agreements are fair,

24
 25

¹ In accordance with the Court’s December 15, 2021 Order, MDL ECF No. 1651, NCC and UCC’s
 26 sales in U.S. dollars to the Class during the class period are attached hereto the Declaration of Joseph R.
 27 Saveri (“Saveri Decl.”) as Exhibit C; NCC and UCC’s annual profits during the class period are
 28 attached hereto as Exhibit D; and the settlement amounts paid by all settling defendants to date from
 highest to lowest amounts are set forth as Exhibit E.

1 reasonable, and adequate, and should be finally approved. The proposed schedule is summarized in
 2 Attachment A.

3 **II. CASE HISTORY**

4 **A. The Class's Factual Allegations and Claims**

5 The Defendants in this action are 22 different corporate families that manufactured and sold
 6 capacitors in the United States and around the world. The Class alleges that at least as early as January
 7 1, 2002, Defendants entered into a price-fixing conspiracy with the purpose and effect of fixing, raising,
 8 and stabilizing the prices of their aluminum, tantalum, and film capacitors sold to United States
 9 purchasers. *See* Saveri Decl., ¶3.

10 **B. Procedural History and Discovery**

11 With these Settlements, the Class will have brought this case to a successful resolution against
 12 all Defendants that have responded to the complaint.² The case began when Plaintiff Chip-Tech, Ltd.
 13 filed the capacitors price-fixing complaint in July 2014. ECF No.³ 1; *see also* Saveri Decl., ¶ 4. The
 14 Class's Third Amended Complaint, filed on September 6, 2017, is the operative pleading. ECF No.
 15 1831; Saveri Decl., ¶ 4. On November 14, 2018, the Court certified the Direct Purchaser Class. ECF No.
 16 2231.

17 The case has been tried⁴ and the Court is substantially familiar with the merits of the case. In the
 18 four prior rounds of settlements that the Court has approved, *e.g.*, ECF No. 1713; MDL ECF No. 249,
 19 MDL ECF No. 1422, counsel for the Class ("Lead Class Counsel") set forth its and the class

23
 24 ² Defendants Toshin Kogyo, LTD, and Nissei Electric Ltd. were properly served but failed to appear to
 25 defend themselves. The Court has entered default judgment against Toshin Kogyo, MDL ECF No. 116,
 26 and Lead Class Counsel intends to request the Court enter default judgment against Nissei forthwith.

27 ³ "ECF No. __" citations to entries in Case No. 3:14-cv-03264.

28 ⁴ Indeed, the case has been tried twice. The first trial occurred in March 2020 before it was interrupted
 29 by the COVID-19 pandemic and mistrial was declared. Saveri Decl., ¶ 4. The case was tried a second
 30 time beginning in November 2021.

1 representatives' efforts in prosecuting this action.⁵ MDL ECF No. 172, at 3-5. After three weeks of
 2 trial., the Class has settled with the remaining defendants with total settlement amounts significantly
 3 exceeding single damages as calculated by the Class's experts. Saveri Decl., ¶¶ 4, 22.

4 **C. Prior Settlement History**

5 On June 27, 2017, the Court granted final approval of the Class's first round of settlements with
 6 the NEC Tokin, Fujitsu, Nitsuko, Okaya, and ROHM defendants totaling \$32.6 million. ECF No. 1713.
 7 On June 28, 2018, the Court granted final approval of the Class's second round of settlements with the
 8 Hitachi Chemical and Soshin defendants totaling \$66.9 million. ECF No. 2166. On May 16, 2019, the
 9 Court granted final approval of the Class's third round of settlements with the Nichicon and Rubycon
 10 defendants totaling \$108 million plus up to an additional \$12 million in contingent payments based on
 11 Rubycon's financial results through fiscal year 2019. MDL ECF No. 587 at 11. On November 6, 2020,
 12 the Court granted final approval of the Class's fourth round of settlements with the AVX, ELNA, Holy
 13 Stone, KEMET, Panasonic, Shinyei, Shizuki and Taitsu defendants totaling \$232.05 million. MDL ECF
 14 No. 1422. These settlements demonstrate that Lead Class Counsel and the named class representatives
 15 have diligently and successfully represented the Class.

16 A summary of the distributions made for the first two rounds of settlements—including
 17 information concerning the total settlement funds, the total number of Class Members, the total
 18 number of notices directly mailed, the number and percentage of claim forms submitted, the average
 19 recovery per Class Member, the administrative costs, and the attorneys' fees and costs—is set forth in
 20 Attachment B. Lead Class Counsel estimates that the number and percentage of Class Members that
 21 will participate in this round of settlements are likely to be similar to those in the prior settlements.

22
 23
 24
 25 ⁵ These substantial efforts have included extensive discovery, analyzing 39 million Bates-numbered
 26 pages (mostly in Japanese) from over 100 document custodians, deposing over 90 individuals, and
 27 trying the case in March 2020 before trial was interrupted by the COVID-19 pandemic. *Id.* Since the
 28 time the Court granted final approval as to the fourth round of settlements, MDL ECF No. 1068, the
 Class has diligently prepared the case for trial, engaged in mediation with the Matsuo and Chemi-Con
 defendants, and engaged in three weeks of trial advocacy at the second trial. *See* Saveri Decl., ¶¶ 16-17.

1 **III. SUMMARY OF PROPOSED SETTLEMENT**

2 **A. Settlement Consideration—\$165 Million**

3 Pursuant to their Settlement Agreements⁶ described below, the Settling Defendants will make,
 4 or have already made, payments into an escrow account (the “Settlement Fund”), held and
 5 administered by an escrow agent. Saveri Decl., Ex. A at ¶ 17; *id.*, Ex. B at ¶ 17. Lead Class Counsel
 6 recommends the appointment of Citibank, N.A. as the escrow agent.

7 **1. The Settlements Are in the Best Interests of the Class**

8 The settlements between the Class and Matsuo and the Class and Chemi-Con benefit the Class
 9 and function in tandem. Based on Matsuo’s financial condition, Lead Class Counsel determined the
 10 best course of action would be to first settle with Matsuo in order to bring Chemi-Con to the negotiating
 11 table to attempt to get the most favorable settlement possible for the class.⁷ Saveri Decl., ¶ 20. This
 12 included analysis of the financial condition of Matsuo and Chemi-Con respectively, including the
 13 retention of forensic accountants and pursuing targeted inquiries through the mediator and as part of
 14 the settlement process. *See id.*, ¶ 16. The Class made a number of differing proposals to structure the
 15 schedule of payments consistent with Matsuo’s financial condition. *See id.*, ¶¶ 16-19. This course of
 16 action worked. *Id.*, ¶ 20. The settlement with Matsuo paved the way for the settlement with Chemi-Con
 17 because Chemi-Con was the only remaining Defendant, thus ensuring the best recovery for the Class.
 18 *Id.* Now both parties have settled in part due to the Lead Class Counsel’s decision to settle first with
 19 Matsuo.

20 **2. Matsuo’s Settlement Consideration**

21 The Class and Matsuo executed an agreement effective March 16, 2022. Saveri Decl., ¶ 23; *id.*,
 22 Ex. A. The Class agreed to release its claims against Matsuo in exchange for a sum total of \$5,000,000

24

⁶ Other than the Settlement Agreements attached to the Saveri Declaration, there are no other
 25 agreements relating to the settlement that are required to be identified under Fed. R. Civ. P. 23(e)(3).

26 ⁷ Additionally, Lead Class Counsel determined settlement with Matsuo would benefit the Class due to
 27 Matsuo’s lack of U.S. assets and in light of the uncertainty of enforcing a treble-damages award in Japan
 under Japanese law. Saveri Decl., ¶ 20; *see generally* M. Waxman, *Enforcing American Private Antitrust
 Decisions in Japan: Is Comity Real?* 44 DEPAUL L. REV. 1119 (1995) (discussing comity concerns and
 other impediments to enforcement of treble damage judgments rendered in United States courts).

1 USD in five equal payments: \$1,000,000 payable within 30 days of the execution of the Settlement
 2 Agreement; \$1,000,000 payable within twelve (12) months of the execution of the Settlement
 3 Agreement; \$1,000,000 payable within twenty-four (24) months of the execution of the Settlement
 4 Agreement; \$1,000,000 payable within thirty-six (36) months of the execution of the Settlement
 5 Agreement; and \$1,000,000 payable within forty-eight (48) months of the execution of the Settlement
 6 Agreement. Saveri Decl., Ex. A, ¶ 17. In light of the trial, Matsuo has no further cooperation obligations
 7 under its settlement agreement.⁸

8 **3. Chemi-Con's Settlement Consideration**

9 The Class and Chemi-Con executed an agreement effective March 16, 2022. Saveri Decl., ¶ 24;
 10 *id.*, Ex. B. The Class agreed to release its claims against the Chemi-Con defendants in exchange for a
 11 sum total of \$160,000,000 USD in two payments: \$100,000,000 in cash payable by June 15, 2022, and
 12 \$60,000,000 payable by December 14, 2022. Saveri Decl., Ex. B, ¶ 17. In light of the settlement
 13 amount, the extensive discovery from Chemi-Con, and the stage of the case, Chemi-Con has no
 14 cooperation obligations under its settlement agreement.

15 Accounting for mandatory trebling and offsets with the prior settlements, the \$165,000,000
 16 settlement with the Settling Defendants represents the equivalent of a jury verdict in the amount of
 17 \$201,516,666.67. Saveri Decl., ¶ 22. This does not account for the delay and uncertainty of likely
 18 appeals after a successful verdict if the Class recovered through a jury verdict as opposed to settlement.
 19 *See id.* The Settling Defendants were represented by some of the best defense attorneys in the nation,
 20 and the settlement reached with the Settling Defendants provides more than adequate recovery for the
 21 Class while ensuring recovery is not delayed or diluted through further proceedings. *Id.*

22 **B. The Class**

23 On February 28, 2019, the Court entered an Order Granting the Class's Motion for Approval of
 24 Plan for Notice of Pendency of Class Action, ECF No. 2282, certifying and defining the Class as
 25 follows:

26
 27 ⁸ As additional settlement consideration, Matsuo made Satoshi Okubo available to testify at trial on
 December 2, 2021. Saveri Decl., Ex. A, ¶ 21.
 28

1 All persons (including individuals, companies, or other entities) that
 2 purchased Capacitors (including through controlled subsidiaries, agents,
 3 affiliates, or joint ventures) directly from any of the Defendants, their
 4 subsidiaries, agents, affiliates, or joint ventures from January 1, 2002 to
 5 December 31, 2013 (the “Class Period”), and such persons are: (a) inside
 6 the United States and were billed or invoiced for capacitors by one or more
 7 Defendants during the Class Period (*i.e.*, where capacitors were “billed to”
 8 persons within the United States); or (b) outside the United States and
 9 were billed or invoiced for capacitors by one or more Defendants during the
 10 Class Period, where such capacitors were imported into the United States
 11 by one or more Defendants (*i.e.*, where the capacitors were “billed to”
 12 persons outside the United States but “shipped to” persons within the
 13 United States).

14 Excluded from the Class are: (1) Defendants (and their subsidiaries, agents,
 15 and affiliates); (2) shareholders holding more than 10% equity interest in
 16 Defendants; (3) each member of the Class that timely requests exclusion
 17 by “opting out”; (4) governmental entities; and (5) the judges and
 18 chambers staff in this case, including their immediate families.

19 *Id.* The Settlement Agreements use the same class definition. Saveri Decl., Ex. A at 3-4, ¶f; *id.*, Ex. B at
 20 4, ¶f.

21 **C. Release of Claims**

22 In exchange for the valuable consideration being provided by the Settling Defendants, the Class
 23 will release the Settling Defendants from all claims related to any of the alleged conduct giving rise to
 24 this litigation concerning the direct purchase of Capacitors in the United States or for delivery in the
 25 United States. Saveri Decl., Ex. A, ¶11; *id.*, Ex. B, ¶11. The releases in the Settlement Agreements
 26 match the scope of the claims included in the Class definition. *Id.* In sum total, the Class’s settlements
 27 with defendants significantly exceed single damages as calculated by the Class’s experts. Saveri Decl., ¶
 28 22; MDL ECF No. 1068-1, ¶17.

29 **D. Attorneys’ Fees and Expenses**

30 The Settlement Agreements provide that Lead Class Counsel may seek attorneys’ fees and
 31 reimbursement of costs and expenses incurred in the prosecution of this litigation. Saveri Decl., Ex. A, ¶
 32 27; *id.*, Ex. B, ¶26. Lead Class Counsel intends to file a motion seeking \$66,000,000 (40% of the
 33 Settlement Fund) for legal fees consistent with the Ninth Circuit’s permitted awards for fees calculated
 34

1 using the “percentage-of-the-fund” approach. *See In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-*
 2 *Aid Cap Antitrust Litig.*, 768 F. App'x 651, 653 (9th Cir. 2019). On a cumulative basis, the total amount
 3 of attorneys' fees—the requested \$66,000,000 added to the fee awards for the First, Second, Third and
 4 Fourth Round Settlements—is \$187,490,000. *See* Saveri Decl., ¶ 35. This represents attorneys' fees of
 5 approximately 31.01% of the common fund which Class Counsel has recovered for the benefit of the
 6 Class in this case. *See, e.g., In re Lidoderm Antitrust Litig.*, No. 14-md-02521-WHO, 2018 WL 4620695, at
 7 *1-2 (N.D. Cal. Sep. 20, 2018) (approving 33% fee award in end-payor class action settlement recovering 46%
 8 of single damages estimate); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1020 (E.D. Cal. 2019) (33%
 9 fee award approved where settlement recovered 48% of experts' estimate damages); *In re Heritage Bond*
 10 *Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) (36% recovery justified one-
 11 third fee award and collecting cases); *see also, e.g., Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964-965 (9th
 12 Cir. 2009) (antitrust settlement for 30% of estimated damages “fair and reasonable no matter how you slice
 13 it”); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002); *In re Transpac. Passenger Air Transp.*
 14 *Antitrust Litig.*, No. 3:07-cv-05634-CRB, 2019 WL 6327363, at *6 (N.D. Cal. Nov. 26, 2019); *In re Urethane*
 15 *Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *4 (D. Kan. July 29, 2016) (“This enormous
 16 success in a highly contingent case favors an award of a substantial percentage of the . . . settlement fund to
 17 the counsel who achieved that success for the class members”). In addition to financial consideration, the
 18 Class has also benefitted from the cooperation that Lead Class Counsel secured from previously settling
 19 defendants.

20 Lead Class Counsel intends to submit in its motion for attorneys' fees all counsels' lodestar to
 21 date. Saveri Decl., ¶ 36. Lead Class Counsel also intends to request an amount not to exceed
 22 \$4,000,000 (approximately 2.42% of the Settlement Fund) to reimburse incurred litigation costs
 23 and expenses.⁹ *Id.*, ¶ 37.

24
 25
 26 ⁹ Lead Class Counsel proposes referring their fee and cost application connected with this Fifth Round
 27 of Settlements to Special Master Ip in the first instance, a procedure endorsed by the Court when the
 28 Court previously heard the Class's motion for preliminary approval of prior rounds of Settlements. *E.g.*,
 MDL ECF No. 1101.

1 **E. Class Representative Service Awards**

2 Consistent with the Northern District of California's Procedural Guidance for Class Action
 3 Settlements, Lead Class Counsel intends to submit in its motion for attorneys' fees a request for service
 4 awards for the named class representatives in this case. Saveri Decl., ¶ 38. In particular, Class Counsel
 5 intends to seek service awards for the four named class representatives: \$100,000 for Plaintiff Chip-
 6 Tech Ltd. ("Chip-Tech"); \$100,000 for Plaintiff eIQ Energy, Inc. ("eIQ"); \$75,000 for Plaintiff
 7 Dependable Component Supply Corp.; and \$50,000 for Plaintiff Walker Component Group, Inc.
 8 Service awards are "fairly typical in class action cases." *Rodriguez*, 563 F.3d at 958. Service awards are
 9 particularly appropriate when the litigation is "complicated" and "took up quite a bit of the class
 10 representatives' time." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015);
 11 *accord In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 633-34 (N.D. Cal. 2021).

12 Each of the named Plaintiffs produced thousands of documents during the course of this
 13 litigation, were subject to multiple depositions, and devoted dozens to hundreds of hours in assisting
 14 Class Counsel in this case. *See Krzywinski Decl.*, ¶¶ 3-10; *Lubman Decl.*, ¶¶ 2, 5-15; *Ryan Decl.*, ¶¶ 3-
 15 8; *Walker Decl.*, ¶¶ 4-7. Plaintiffs Chip-Tech and eIQ in particular devoted significant time and effort on
 16 behalf of the Class as Barry Lubman of Chip-Tech and Gene Krzywinski of eIQ, in addition to providing
 17 significant discovery in this case, twice presented testimony before a jury, including testimony during
 18 the prior trial that was interrupted by the onset of the COVID-19 pandemic. *Krzywinski Decl.*, ¶ 8;
 19 *Lubman Decl.*, ¶¶ 11-14. "[T]he Court knows firsthand from seeing plaintiff[s] [Lubman and
 20 Krzywinski] on the witness stand during the . . . trial[s] that [they] ha[ve] put time and effort into this
 21 case, likely more than is asked of the usual named class action representative." *Norcia v. Samsung
 22 Telecomms. Am.*, LLC, No. 14-cv-00582-JD, 2021 WL 3053018, at *5 (N.D. Cal. July 20, 2021).

23 The requested total service awards are well within the fair and reasonable awards approved by
 24 courts in this circuit. Saveri Decl., ¶ 39. The average recovery unnamed class members received for the
 25 first four rounds of settlement is \$630,521.82—significantly above the requested aggregate total of
 26 service awards Class Counsel intends to seek. That is before accounting for the distribution of the
 27 pending settlements with Matsuo and Chemi-Con. *See Online DVD-Rental*, 779 F.3d at 947. Further, the
 28

1 requested service awards cumulatively make up a mere 0.06% of the total settlement fund of
 2 \$604,550,000, which is fair and reasonable in light of the significant benefit to the Class resulting from
 3 Plaintiffs' efforts. *See, e.g., id.* at 948 (approving service awards of \$45,000 totaling 0.17% of the total
 4 settlement fund of \$27,250,000); *see also* Saveri Decl., ¶ 39.

5 Consistent with the Northern District of California's Procedural Guidelines for Class Action
 6 Settlement, Lead Class Counsel intends to submit evidence of the named class representatives'
 7 involvement in the case and other justifications for the requested service awards. *See, e.g., Krzywinski*
 8 *Decl., ¶¶ 3-10; Lubman Decl., ¶¶ 2, 5-15; Ryan Decl., ¶¶ 3-8; Walker Decl., ¶¶ 4-7.*

9 **IV. THE PROPOSED SETTLEMENTS SHOULD BE PRELIMINARILY APPROVED**

10 The Class proposes following the same procedures for distributing settlement funds using the
 11 same allocation formula that the Court preliminarily and finally approved for past rounds of settlements.
 12 ECF Nos. 2244, 1713; MDL ECF Nos. 249, 1422. The consideration for the Settlement Agreements is
 13 at least as favorable as with the prior rounds. The factors to be considered under the Procedural
 14 Guidelines for Class Action Settlements for the Northern District of California also support approval.
 15 The Court therefore should preliminarily approve the settlements with the Settling Defendants.

16 **A. Standards for Preliminary Approval of a Proposed Settlement**

17 A class action may be dismissed or settled only with the approval of the Court. *See Fed. R. Civ.*
 18 *P. 23(e)(1).* The Rule 23(e) settlement approval procedure where a class has been certified can be broken
 19 into three principal steps: (1) preliminary approval of the proposed settlement; (2) dissemination of
 20 notice of the settlement to all affected Class Members; and (3) a final approval determination following
 21 a fairness hearing at which Class Members may be heard regarding the settlement, and at which counsel
 22 may introduce evidence and present arguments concerning the fairness, adequacy, and reasonableness
 23 of the settlement. *See* 4 William B. Rubenstein, Albert Conte & Herbert Newberg, *Newberg on Class*
 24 *Actions* §§ 13:39 *et seq.* (5th ed. 2014).

1 The Court will determine whether the proposed settlement is “fair, adequate, and reasonable”
 2 at the final approval stage—i.e., after notice is disseminated and a fairness hearing is held.¹⁰ At this
 3 preliminary approval stage, the Court need only make “an ‘initial evaluation’ of the fairness of the
 4 proposed settlement” *In re High-Tech Emps. Antitrust Litig.*, No. 11-cv-02509, 2015 WL 12991307,
 5 at *1 (N.D. Cal. Mar. 3, 2015). To grant preliminary approval, the Court should determine if the
 6 proposed settlement substantively falls “within ‘the range of reasonableness.’” *Id.*

7 **B. The Proposed Settlements Are Procedurally Sound and Presumptively Fair**

8 The proposed Settlement Agreements are the product of arm’s-length negotiations between
 9 attorneys who are highly experienced in complex antitrust cases and well informed about the facts and
 10 legal issues of this case. *See* Saveri Decl., ¶¶ 16-22. As here, post-certification settlement agreements
 11 reached during trial after meaningful discovery and through arms-length negotiations conducted by
 12 capable counsel are presumptively fair. *See In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL
 13 1594403, at *9 (C.D. Cal. June 10, 2005). Lead Class Counsel’s substantial advancement of the
 14 litigation to date and familiarity with the evidence further indicate that the Settlement Agreements are
 15 fair and reasonable. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

16 **C. The Proposed Settlements Are Within the Range of Reasonableness**

17 The Settlement Agreements, which provide for significant cash payments, afford important
 18 relief to Class Members and the consideration offered by the Settling Defendants is within the range of
 19 reasonableness. Damages in a price-fixing antitrust conspiracy case generally are based on the amount of
 20 the overcharge resulting from anticompetitive activity, and are usually measured as a percentage of total
 21 sales. The percentage recovered from the Settling Defendants is an extraordinary result. It far exceeds
 22 the percentage recovered in many other antitrust class action settlements. *See, e.g., In re Dynamic*
23 Random Access Memory (DRAM) Antitrust Litig., No. M-02-1486 PJH, slip. op. (N.D. Cal. Nov. 1, 2006);
24 In re Auto. Refinishing Paint Antitrust Litig., MDL No. 1426, 2004 WL 1068807, at *2 (E.D. Pa. May 11,

25
 26 ¹⁰ A preview of the fairness standards for final approval weighs heavily in favor of preliminary approval
 27 here. *See In re High-Tech Emps. Antitrust Litig.*, No. 11-cv-02509, 2013 WL 6328811, at *6 (N.D. Cal.
 28 Oct. 30, 2013). Further, the complexity of class action litigation favors settlement. *See Class Plaintiffs v.
 City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). This antitrust class action is no exception.

1 2004); *see also In re Packaged Seafood Prods. Antitrust Litig.*, Case No. 3:15-md-002670-DMS-MDD,
 2 2022 WL 228823, at *23 (S.D. Cal. Jan. 26, 2022) (finding settlement totaling \$20 million “compares
 3 favorably to other antitrust and class action settlements”) (citing, *inter alia*, *Carlin*, 380 F. Supp. 3d at
 4 1911 (“Courts regularly approve class settlements where class members recover less than one quarter of
 5 the maximum potential recovery amount.”); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.
 6 2000) (finding settlement that provided plaintiffs one-sixth of their potential recovery to be fair and
 7 adequate)). This is before considering that the total settlement fund recovers approximately 141.4% of
 8 single damages as calculated by the Class’s expert.

9 Matsuo agreed to pay a total of \$5,000,000 to settle Plaintiffs’ claims. Saveri Decl., ¶ 18; *id.*, Ex.
 10 A, ¶ 17. This amount is significant given the evidence of Matsuo’s participation in the price-fixing
 11 conspiracy, Matsuo’s low share of total commerce during the Class Period, Matsuo’s poor financial
 12 condition, and Lead Class Counsel’s use of the settlement with Matsuo to assist in obtaining for the
 13 class a settlement from Chemi-Con. This strategy assisted in having Chemi-Con agree to pay a total of
 14 \$160,000,000, the largest settlement among all prior settlements achieved by the Class. Saveri Decl.,
 15 ¶¶ 20-21; *id.*, Ex. B, ¶ 17.

16 The settlements with the Settling Defendants provide Class Members with significant cash
 17 compensation, avoiding the risk that the jury would side with Defendants, or not award the full damages
 18 sought by Plaintiffs, and the delay of an appeal even with a successful trial verdict.¹¹ The settlements
 19 were reached in the midst of trial and on the eve of closing arguments. Given the uncertainty of
 20 litigation and that the sum total of all the settlements to date significantly exceed the single damages as
 21 calculated by the Class’s experts (141.4% of single damages), the cash consideration represents an
 22 excellent result.¹²

23

24 ¹¹ Accounting for mandatory trebling and offsets with the prior settlements, the \$165,000,000
 25 settlement represents the equivalent of a jury verdict in the amount of \$201,516,666.67. Saveri Decl.,
 26 ¶ 22. This does not account for the delay and uncertainty of likely appeals after a successful verdict, nor
 does it account for any efforts to enforce a judgment in Japan.

27 ¹² The settlements are significant for another reason—the question of whether a treble damage award
 28 would be enforceable in Japan is unsettled. See *supra* note 7. The settlements avoid the uncertainty and
 delay of enforcing a treble-damage award in Japan had the Class prevailed at trial.

1 Also weighing in favor of preliminary approval is Lead Class Counsel's experience and success
 2 in similar class actions. Lead Class Counsel have worked on large, complex cases for decades, including
 3 antitrust and consumer protection class action cases. Saveri Decl., ¶ 5; *see also id.*, Ex. H. The judgment
 4 of experienced counsel regarding a settlement reached after arm's-length negotiations should be given
 5 significant weight and a presumption of reasonableness. *See Linney v. Cellular Alaska P'ship*, Nos. C-96-
 6 3008 DLJ, C-97-0203 DLJ, C-97-0425 DLJ & C-97-0457 DLJ, 1997 WL 450064, at *5-6 (N.D. Cal. July
 7 18, 1997). In addition, the proposed settlements were reached during trial, which further weighs in favor
 8 of approval. *See Low v. Trump Univ., LLC*, No. 10-cv-00940-GPC-WVG, 2016 WL 7387292, at *4 (S.D.
 9 Cal. Dec. 20, 2016).

10 **V. THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED**

11 Should the Court grant preliminary approval, it must also "direct notice in a reasonable manner
 12 to all class members who would be bound by the proposal. . . ." Fed. R. Civ. P. 23(e)(1)(B). Notice
 13 should be the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2)(B). Moreover,
 14 "the class must be notified of a proposed settlement in a manner that does not systematically leave any
 15 group without notice." *Officers for Justice v. Civ. Serv. Comm'n of City & Cty. Of San Francisco*, 688 F.2d
 16 615, 624 (citations omitted). The Class plans to implement the same notice and claims administration
 17 plan used in the prior rounds of settlements. The notice plan provides the best notice practicable under
 18 the circumstances. Fed. R. Civ. P. 23(c)(2)(B).

19 **A. Summary of Notice Plan**

20 **1. Notice and Claims Administrator**

21 The Class requests that the Court appoint Rust Consulting ("Rust") as Claims Administrator.
 22 Rust has 30 years of class action settlement administration experience and has administered more than
 23 6,500 class action settlements, judgments, and similar administrative programs. Declaration of Kendall
 24 S. Zylstra ("Zylstra Decl.") at ¶ 2. Lead Class Counsel has worked with Rust in the past—including on
 25
 26
 27

1 the prior four rounds of settlements in this action.¹³ *Id.*, ¶ 5. Rust is familiar with this case, the
 2 transactional database and Class Member contact information.¹⁴ *See id.*, ¶¶ 5-6.

3 **2. Settlement Website**

4 Rust will update the existing Settlement Website,¹⁵ which provides key settlement information
 5 such as case status, settlement documents, and FAQs concerning the Settlement Agreements and
 6 claims administration. Zylstra Decl., ¶ 17. Rust will also create a public-facing dashboard on the site that
 7 displays updates about the administration process, such as the number and value of claims filed. *Id.* A
 8 secure section of the Website allows Class Members to file online claims or adjustments. *See id.*

9 **3. Direct Mail Notice—Long Form Notice**

10 The Class proposes sending notices by direct mail to Class Members with valid addresses (a) in
 11 the transactional databases Defendants provided to the Class, and (b) in records of past contact with
 12 Lead Class Counsel. Zylstra Decl., ¶¶ 7-10; Saveri Decl., ¶¶ 27-32. The Class possesses significant
 13 reliable data reflecting Class Members' respective purchases of capacitors during the relevant period.
 14 Saveri Decl., ¶ 30. Individual notices with pre-populated purchase data will be mailed directly to Class
 15 Members.¹⁶

16 The Class proposes mailing the Long Form Notice, Saveri Decl., Ex. F, along with a claim form
 17 that contains pre-populated purchase data to Class Members. *See Zylstra Decl.*, ¶¶ 8-10, 13-16. The
 18 Long Form Notice provides, in plain language, a brief explanation of the case; the terms of the
 19

20 ¹³ Lead Class Counsel is also familiar with Rust's work based on Rust's work for Lead Class Counsel in
 21 another class action, *In re Cipro Cases I and II*, J.C.C.P. Nos. 4154, 4220 (San Diego County Super. Ct.).

22 ¹⁴ Lead Class Counsel believes that it would be inefficient and expensive to switch to a different
 23 administrator now that Rust has gained familiarity administering several rounds of settlements in this
 24 complex litigation. Saveri Decl., ¶ 26.

25 ¹⁵ The Settlement Website can be accessed at www.CapacitorsAntitrustSettlement.com.

26 ¹⁶ It is unlikely that there are many Class Members who are not identified in Defendants' transactional
 27 data. As mentioned in the moving papers for the prior rounds of settlements, Lead Class Counsel
 28 pursued discovery about the completeness of transactional data with many Defendants in connection
 with the FTAIA briefing, and Defendants testified that all transactions in the types of commerce the
 Court has deemed within the Sherman Act's ambit are recorded in transactional data. *See Saveri Decl.*,
 ¶¶ 30-32.

1 Settlement Agreements; the maximum amount Lead Class Counsel may seek for reimbursement of
 2 costs and expenses; the date, time, and place of the final approval hearing; the opportunity to opt out of
 3 the Settlement Class; the procedures for submitting comments on and objections to the Settlement
 4 Agreements; and a link to the Settlement Website. Saveri Decl., Ex. F.

5 **4. Publication of Notice**

6 To reach the greatest number of unidentified Class Members, Rust will publish the Summary
 7 Notice (Saveri Decl., Ex. G) in the national edition of the *Wall Street Journal*. Saveri Decl., ¶ 29. Rust
 8 will also post a copy of the Settlement Notice and Settlement Agreements on at least two Internet
 9 websites directed towards the capacitors and passive electronics industry.¹⁷ Zylstra Decl., ¶ 12. The
 10 Long-Form Notice will also be available on the Settlement Website. *Id.*, ¶ 17.

11 **B. The Notice Forms and Dissemination Plan Meet All Requirements**

12 The Class's proposed notice plan satisfies the fairness standards set forth in Rule 23. Each form
 13 of notice presents all required categories of information clearly and in plain English. *See Officers for*
 14 *Justice*, 688 F.2d at 624. The notices are therefore substantively sufficient. The proposed dissemination
 15 plan satisfies due process and thus provides the best practicable notice. *See* Fed. R. Civ. P. 23(c)(2)(B).

16 **VI. DISTRIBUTION AND USE OF SETTLEMENT FUNDS**

17 **A. Distribution of Funds to Class Members**

18 Lead Class Counsel recommends following the same procedures effectively used in the prior
 19 rounds of settlements. Payments to Class Members will be calculated and distributed after the Court has
 20 finally approved the Settlement Agreements and after deductions for costs of notice, settlement
 21 administration, attorneys' fees and costs. Zylstra Decl., ¶ 18. Class Member payments will be calculated
 22 on a *pro rata* basis. Saveri Decl., ¶ 33; Zylstra Decl., ¶ 18. A plan of allocation must be "fair, reasonable,
 23 and adequate." *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001).

24 Distribution on a *pro rata* basis, with no class member being favored over others, is fair, adequate, and

27 ¹⁷ The electronic components industry is a niche business. Saveri Decl., ¶ 29. Targeting industry media
 28 will increase the effectiveness of the notice provided. *Id.*

1 reasonable. *See, e.g., In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 4:07-cv-05944-JST (N.D. Cal.
 2 June 8, 2017), ECF No. 5168 at *9.

3 The Class proposes that settlement funds be allocated based on the Class Members' relative
 4 share of capacitors purchased during the Class Period. Saveri Decl., ¶33. When making distributions of
 5 the Settlement Fund to the Class Members that timely submit valid Claim Forms, the Class will
 6 calculate the dollar value of each Class Member's claim in proportion to the total claims submitted.¹⁸ *Id.*
 7 No settlement funds will be subject to reversions to the Settling Defendants.¹⁹

8 **B. Payment of Claims Administration Expenses**

9 The Class requests authorization to use up to \$250,000 from the Settlement Fund to pay Rust to
 10 provide notice to Class Members, and to process and audit submitted claim forms. This amount is
 11 reasonable and consistent with the administration expenses incurred with respect to prior settlement
 12 and administration services.

13 **VII. THE FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

14 The Class requests that the Court grant preliminary approval and set the schedule set forth in
 15 Attachment A, which includes a proposed final approval hearing date on or after July 28, 2022.

16 **VIII. CONCLUSION**

17 For the above reasons, the Class respectfully requests that the Court grant preliminary approval
 18 of the Settlement Agreements, approve the proposed Settlement Notice and dissemination plan, and set
 19 a schedule for the notice period and a date for a final approval hearing.

20
 21
 22
 23
 24
 25 ¹⁸ Class Members can either accept the pre-populated purchases in their claim forms, or they can seek
 26 an adjustment by submitting documentation of additional purchases. Zylstra Decl., ¶14.

27 ¹⁹ Based on the amount of uncashed checks for the first round of settlements—currently less than
 28 \$500—Lead Class Counsel does not anticipate the need for *cy pres* awardees; instead, Lead Class
 Counsel recommends that any uncashed settlement checks be redistributed to Class Members in
 subsequent payments. Saveri Decl., ¶34.

1 Dated: March 31, 2022

Respectfully Submitted,

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16 *Lead Counsel for the Direct Purchaser Class*

1 ATTACHMENT A: Proposed Schedule

2 EVENT	3 SCHEDULE
4 Notice of Class Action Settlement (Saveri Decl., Exs. F & G) to Be Mailed and Posted on Internet	5 Within 18 days of Preliminary Approval Order (May 23, 2022)
6 Summary Notice of Class Action Settlement to Be Published	7 Within 18 days of Preliminary Approval Order (May 23, 2022)
8 Motions for Final Approval and Reimbursement of Litigation Costs and Expenses to Be Filed by Lead Class Counsel, together with Affidavit of Compliance with Notice Requirements	9 56 days prior to Final Approval Hearing (June 2, 2022)
10 Deadline for Settlement Class Members to Submit Claims or Request Exclusion	11 Submitted or postmarked by July 8, 2022 (36 days after Motions for Final Approval and Reimbursement of Litigation Costs and Expenses)
12 Receipt/Filing Deadline for Comments and Objections	13 36 days after Motions for Final Approval and Reimbursement of Litigation Costs and Expenses (July 8, 2022)
14 Opposition(s), if any, to Motions for Final Approval and Reimbursement of Expenses	15 36 days after Motions for Final Approval and Reimbursement of Litigation Costs and Expenses (July 8, 2022)
16 Replies in Support of Motions for Final Approval, and Reimbursement of Expenses, to Be Filed by Lead Class Counsel, only if Objections to the Motions are Filed	17 10 days prior to Final Approval Hearing (July 18, 2022)
18 Notice of Intent to Appear by Objectors Must be Filed	19
20 Service/Filing of Notices of Appearance at Final Approval Hearing	21 10 days prior to Final Approval Hearing (July 18, 2022)
22 Final Approval Hearing	23 July 28, 2022

1 ATTACHMENT B: Prior Settlement History

2 *In re Capacitors Antitrust Litig.,*
 3 Case No. 3:17-md-02801-JD
 4 ROUND 2: Approved June 28, 2018
 5 All figures are best estimates

	% Total Settlement	
Settlement	\$66,900,000	100%
Distribution to Class	\$43,652,604	65.3%
Claims		
Participation rate	78.5% of commerce	
Class members	3,041 (known)	
Notices mailed	3,041	
Claims submitted	681	
Approved claims	425	
Average distribution	\$102,712*	
Cy Pres	\$0	0.0%
Attorney fees awarded	\$16,725,000	25.0%
Lodestar	\$70,764,474	
Hours	xx,xxx	
Multiplier	0.24	
Costs and Expenses	\$6,690,000	10.0%
Claims Administration	\$158,415	0.2%
Publication Costs	\$71,472	0.1%

13 *Projected number as distributions have not yet been made.

1 *In re Capacitors Antitrust Litig.,*
 2 Case No. 3:17-md-02801-JD
 3 ROUND 1: Approved June 27, 2017
 4 All figures are best estimates

	% Total Settlement	
Settlement	\$32,600,000	100.0%
Distribution to Class	\$21,287,673*	65.3%
Claims		
Participation rate	66.2% of commerce	
Class members	2,279 (known)	
Notices mailed	2,279	
Claims submitted	719	
Approved claims	282	
Average distribution	\$47,582*	
Cy Pres	\$0	0.0%
Residual (uncashed)	\$447	
Attorney fees awarded	\$8,150,000	25.0%
Lodestar	\$44,444,689	
Hours	105,345.8	
Multiplier	0.18	
Costs and Expenses	\$3,260,000	10.0%
Claims Administration	\$185,308	0.6%
Publication Costs	\$75,872	0.2%

13 *Projected number as not all payments and distributions have
 14 been made

15 *In re High-Tech Employee Antitrust Litig.,*
 16 Case No. 11-cv-2509 (N.D. Cal.)
 17 Final Approval granted September 2, 2015

18 All figures are best estimates

	% Total Settlement	
Settlement	\$435,000,000*	100.0%
Distribution to Class	\$384,300,156	88.3%
Claims		
Participation rate	99.9% of commerce	
Class members	64,466	
Notices mailed	64,466	
Claims submitted	64,410	
Approved claims	64,410	
Average distribution	\$5,966	
Cy Pres	\$0	0.0%
Attorney fees awarded	\$45,822,312	10.5%
Lodestar	\$18,720,707	
Hours	37,131	
Multiplier	2.45	
Costs and Expenses	\$4,539,844	1.0%
Claims Administration	\$360,000	less than 0.1%

26 * Resolution of the case proceeded in two rounds. The first
 27 round distributed \$20 million to class members who filed
 28 claims. The second round distributed \$415 million to the full
 list of class members, without a claims process.

In Re Titanium Dioxide Antitrust Litigation
Case No. 1:10-cv-00318-RDB (D. Md.)
Final Approval granted December 13, 2013

All figures are best estimates

		% Total Settlement
Settlement	\$163,500,000	100%
Distribution to Class	\$104,014,824	63.6%
Claims		
Participation rate	53.1% of class members*	
Class members	650 (known)*	
Notices mailed	5,877**	
Claims submitted	643	
Approved claims	345***	
Average distribution	\$301,497	
Cy Pres	\$0	0.0%
Attorney fees awarded	\$54,500,000	33.3%
Lodestar	\$22,812,576	
Hours	45,585.33	
Multiplier	2.39	
Costs and Expenses	\$4,555,205	4.4%
Claims Administration	\$112,010	less than 0.1%
Publication Costs	\$75,872	less than 0.1%

* Estimate created by Plaintiffs' expert based on Defendants' transactional data.

** Containing all unique addresses obtained from Defendants.

*** Claimants were required to provide proofs of claim, which were verified by the claims administrator.

In re Cipro Cases I & II, JCCP Case Nos. 4154 & 4220 (San Diego Sup. Ct.)
IPP Settlement with Bayer approved
November 18, 2013

All figures are best estimate.

		% Total Settlement
Settlement	\$74,000,000	100.0%
Distribution to Class	\$45,902,769	62.0%
Class Representative		
Incentive Awards	\$40,000	
Claims		
Participation rate	20.2% of commerce	
Class members	unknown	
Notices mailed	N/A* / 44,929** ¹	
Claims submitted	7,907* / 463**	
Approved claims	2,951* / 295**	
Average distribution	\$14,150 ² \$124* \$154,651**	
Cy Pres	\$0	0.0%
Residual	\$262,155 ³	
Attorney fees awarded	\$24,642,000	33.3%
Lodestar	\$9,856,800 (curr. rates) \$8,214,000 (hist. rates)	
Hours	20,344	
Multiplier	2.5 (curr. rates) 3.0 (hist. rates)	
Costs and Expenses	\$2,501,241	3.4%
Claims Administration	\$383,118	0.5%
Publication Costs	\$459,136	0.6%

* Consumer

** Third-party Payor

¹ The claims administrator sent notices to 44,929 potential class member third-party payors.

² Average distribution amount, including consumer and third-party payors.

³ Residual funds from uncashed checks. Court ordered to be transferred to litigation fund.